

A **MMIP SERVICES SDN BHD & ORS v. MOHD SYED
SYED JAMALUDIN & ORS**

COURT OF APPEAL, PUTRAJAYA
HAS ZANAH MEHAT JCA
CHE MOHD RUZIMA GHAZALI JCA

B SEE MEE CHUN JCA
[CIVIL APPEAL NO: W-02(NCVC)(A)-2417-12-2021]
12 JULY 2023

C **Abstract** – *An applicant, who has had ample time and opportunity to challenge the jurisdiction of a foreign jurisdiction, but deliberately chose not to do so, cannot later in the day seek an ex parte order in a backdoor attempt to escape liability and circumvent the law ie, the Reciprocal Enforcement of Judgment Act 1958. Such act reeks of bad faith, prejudices the other party and ought not to be condoned or allowed.*

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E **CIVIL PROCEDURE:** *Jurisdiction – Forum – Accident occurred in Malaysia involving Singaporeans – Singaporeans commenced action against Malaysian bus driver, bus company and insurer in Singaporean court – Whether circumstances and facts of accident justified Malaysian courts as more appropriate forum to hear claim – Whether Malaysian laws applicable*

F **CIVIL PROCEDURE:** *Judgments and orders – Ex parte order – Accident occurred in Malaysia involving Singaporeans – Singaporeans commenced action against Malaysian bus driver, bus company and insurer ('Malaysians') in Singaporean court – Papers served to Malaysians but no action taken by Malaysians – Matter culminated into assessment of damages – Singaporeans served final judgments of High Court of Singapore on Malaysians and demanded for judgment sum awarded – Malaysians sought ex parte order – Whether there was element of bad faith in obtaining ex parte order*

G **CIVIL PROCEDURE:** *Judgments and orders – Foreign judgment – Enforcement – Accident occurred in Malaysia involving Singaporeans – Singaporeans commenced action against Malaysian bus driver, bus company and insurer ('Malaysians') in Singaporean court – Papers served to Malaysians but no action taken – Matter culminated into assessment of damages – Singaporeans served final judgments of High Court of Singapore on Malaysians and demanded for judgment sum awarded – Whether final judgments of High Court of Singapore met all three requirements stated in s. 3(3) of Reciprocal Enforcement of Judgment Act 1958 – Whether Singaporeans entitled to register and execute final judgments of High Court of Singapore*

I An accident had occurred in Johor, Malaysia, where the bus driven by the third appellant ('third defendant') plunged into a ravine, killing nine people and injuring 16 others. The bus was insured and owned by the first and second appellants ('defendants'), respectively. The respondents ('plaintiffs'),

who were Singaporeans, commenced an action against the second and third defendants for negligence. The plaintiffs had notified the first defendant of their intention to file the writ actions at the High Court of Singapore. In response, the defendants stated that the Singapore courts had no jurisdiction to hear the matter as the cause of action arose in Malaysia and the defendants would not submit to the jurisdiction of the courts in Singapore. Notwithstanding the same, the plaintiffs proceeded to file writ actions against the defendants at the High Court of Singapore. All the writs of summonses were served to the first defendant and the latter acknowledged receipt of the same. As the defendants took no further action to either enter an appearance or challenge the jurisdiction of the High Court of Singapore, the plaintiffs entered interlocutory judgments in default of appearance against the second defendant. The plaintiffs then served six affidavits of evidence-in-chief on the second defendant and the six matters were subsequently collectively fixed for assessment of damages. The first and second defendants were duly notified but, again, chose not to respond. The plaintiffs then proceeded with the assessment of damages and later served the final judgments of the High Court of Singapore on the first defendant and demanded for the judgment sum awarded. This prompted the defendants to file an originating summons ('OS') ('OS 1306') at the Kuala Lumpur High Court, with a certificate of urgency, where they successfully obtained an *ex parte* order, to declare that the defendants were not liable for the accident. Aggrieved, the plaintiffs applied to set aside the *ex parte* order ('OS 1594'). The High Court allowed OS 1594 and set aside the *ex parte* order. Hence, the present appeal.

Held (dismissing appeal with costs)

Per Che Ruzima Ghazali JCA delivering the judgment of the court:

- (1) The defendants had ample time and opportunity to challenge the jurisdiction of the High Court of Singapore but deliberately chose not to do so. In fact, the first defendant wanted to be notified by the plaintiffs in the event that enforcement was sought after *via* reciprocal enforcement. Despite those facts, the plaintiffs were not named as party in OS 1306 by the defendants or, at least, informed of the defendants' intended *ex parte* application. The plaintiffs, as interested parties in OS 1306, were not given a fair chance to be heard before the *ex parte* order was granted. On this ground alone, the plaintiffs had the right to apply to set aside the *ex parte* order. (para 26)
- (2) It would be defying logic if the defendants were allowed to rely on their own non-action in justifying the alleged 'urgency' in their application to obtain the declarations that clearly defied the plaintiffs' right to enforce the final judgments of the High Court of Singapore. More so, the defendants' paramount intention in obtaining the *ex parte* order was to prevent the plaintiffs from enforcing the final judgments of the High Court of Singapore. The element of bad faith in the defendants' action

- A could be inferred. The act of the defendants, in obtaining the *ex parte* order, was akin to the act of escaping liability through the back door which could not be condoned or allowed. (para 36)
- (3) The final judgments of the High Court of Singapore met all three requirements stated in s. 3(3) of the Reciprocal Enforcement of Judgment Act 1958 ('REJA'), namely that the judgments were those of
- B a superior court which were (i) final and conclusive as between the parties; (ii) there was payable, under the judgment, a sum of money; and (iii) the judgments were from a country specified in the First Schedule of the REJA. The plaintiffs were entitled to register and execute the final
- C judgments of the High Court of Singapore in accordance with the provisions of the REJA. The defendants, in filing and obtaining the *ex parte* order, sought to defeat and undermine the purpose and intention of the REJA and was, therefore, in direct contravention of the said law. OS 1306, which was filed by the defendants, was not a *bona fide* attempt
- D to seek a legal remedy from the court but solely for the purpose of circumventing the law. (paras 40 & 41)

Obiter:

- (1) The defendants were not shut out from raising their grievances on the issue of jurisdiction. What the defendants should do is to wait until the
- E plaintiffs apply to register the final judgments of the High Court of Singapore under the REJA and then apply to set it aside on want of jurisdiction. The defendants would still have their day in court to raise the issue of the jurisdiction of the High Court of Singapore in hearing matters related to the accident that happened in Johor. The issue of
- F forum of convenience was no longer relevant to be considered in this appeal. The issue of forum could be argued together with the issue of jurisdiction of the court in setting aside the registered judgments. (paras 43 & 44)

Case(s) referred to:

- G *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 FC (*refd*)
Becker v. Noel & Anor [1971] 2 All ER 1248 (*refd*)
Cheow Chew Khoon v. Abdul Johari Abdul Rahman [1995] 4 CLJ 127 CA (*refd*)
Ketua Pengarah Imigresen Malaysia lwn. Heng Peo [2007] 2 CLJ 111 CA (*refd*)
- H *Mann Holdings Pte Ltd & Anor v. Ung Yoke Hong* [2019] 6 CLJ 475 CA (*refd*)
United Malayan Banking Corp v. Khoo Boo Hor [1996] 1 SLR 359 (*refd*)
Uthayakumar Ponnusamy v. YAB Dato' Sri Najib Tun Razak Perdana Menteri Malaysia & Ors [2017] 6 CLJ 297 CA (*refd*)
WEA Records Ltd v. Visions Channel 4 Ltd & Ors [1983] 2 All ER 589 (*refd*)

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Legislation referred to:

Reciprocal Enforcement of Judgment Act 1958, ss. 3(3), (4), 5(1)(a)(ii)
Road Transport Act 1987, s. 96(1), (3)
Rules of Court 2012, O. 7 rr. 2(1A), 3, O. 32 r. 6
Specific Relief Act 1950, s. 41
Subordinate Courts Act 1948, ss. 59(2), 65(1)(a)

*For the appellant - Tunku Farik Tunku Ismail, Silvaraju Velu & Monisha Pandey;
M/s Silva Velu & Co*

For the respondent - Darren Lai Xuen Wei & Chew Zhen Tao; M/s Richard Wee Chambers

*[Editor's note: For the High Court judgment, please see Mohd Syed Syed Jamaludin & Ors
v. MMIP Services Sdn Bhd & Ors [2022] 8 CLJ 962 (affirmed).]*

Reported by Najib Tamby

JUDGMENT**Che Mohd Ruzima Ghazali JCA:****Introduction**

[1] This appeal emanated from the decision of the learned High Court Judge (LHCJ) at Kuala Lumpur High Court allowing the plaintiffs'/the respondents' application *via* the Originating Summons No. WA-24NCvC-1594-08-2021 (OS 1594) dated 25 August 2021 to set aside an *ex parte* order dated 16 July 2021 (the *ex parte* order) obtained by the defendants/the respondents *via* Originating Summons No. WA-24NCvC-1306-07-2021 dated 14 July 2021 (OS 1306). Hearing of the applications under OS 1306 and OS 1594 were before the same LHCJ.

[2] For ease of reference, parties will be identified as in the trial court, the plaintiffs and the defendants.

Brief Facts

[3] A very tragic bus accident had occurred on 24 December 2016 at KM 137.2 the North South Expressway near Muar, in the state of Johor (the said accident). On that fateful day, the bus bearing registration number AJC 6633 owned by the second defendant and insured by the first defendant had departed from JB Sentral in Johor Bahru and enroute to Kuala Lumpur's Bandar Tasik Selatan Integrated Bus Terminal. The bus was driven by the third defendant who was said to be the servant and/or agent of the second defendant.

[4] At the time of the said accident, it was alleged that the third defendant was driving at high speed when he lost control of the bus and the bus plunged into a ravine. As a result of the accident, six men including the third defendant, who was driving the bus, eight women and one child were killed. Among the injured were seven Malaysians, six Singaporeans, two Myanmar nationals and one person whose nationality was not identified. First, third,

- A fourth, sixth and ninth plaintiffs who are Singaporean were seriously injured were conveyed back to Singapore for medical treatment after they were initially treated in the Muar Hospital within hours of the said accident.
- B [5] All plaintiffs who are Singaporean, appointed Messrs United Legal Alliance LLC now known as Messrs Civic Legal LLC (CLL) to file actions against the second defendant as the owner of the bus and the third defendant as the driver of the bus for negligence, in the High Court of Singapore. First, third, fourth, sixth and ninth plaintiffs are claiming damages for their injuries, second and fifth plaintiffs are claiming as the administrator of the deceased Hamimah binti Mammu, seventh plaintiff is claiming as the administrator of the deceased Faridah binti Tamron and, eighth plaintiff is claiming as the administrator of the deceased Nur Hazimah binti Mustafa.
- C [6] Before filing the actions, CLL had notified the first defendant, the insurers of the bus, about the plaintiffs' intention to file the writ actions in the High Court of Singapore. The first defendant then appointed Messrs Silva Velu & Co (SVC) to handle the matter and responded to CLL's notices.
- D [7] In its response to CLL, SVC had stated that the Singapore courts have no jurisdiction to hear the matter as the cause of action arose in Malaysia and the defendants would not submit to the courts' jurisdiction in Singapore. Notwithstanding the same, CLL proceeded to file writs actions against the defendants at the High Court of Singapore.
- E [8] All the writs of summonses were duly served on the first defendant *vide* several notices of commencement dated on 10 October 2019 whereby SVC had duly acknowledged receipt. As the defendants took no further action to either enter an appearance or challenge the jurisdiction of the High Court of Singapore, the plaintiffs entered interlocutory judgments in default of appearance on 31 January 2020 and 3 February 2020 against the second defendant. The said interlocutory judgments were served on the second defendant by way of the service letters all dated 25 November 2020 and were acknowledged receipt by the second defendant on 27 November 2020.
- F [9] The plaintiffs then served six affidavits of evidence-in-chief on the second defendant on 27 November 2020 and the six matters were subsequently collectively fixed for assessment of damages on 23 February 2021. The first and second defendants were duly notified of the assessment of damages *vide* a notice dated 16 February 2021. Again, the second defendant did not respond to the said notices and the plaintiffs proceeded with the assessment of damages.
- G [10] Pursuant to the assessment of damages, the plaintiffs then served the final judgments by the High Court of Singapore in Suit No. HC/S 1019/2019, HC/S 1021/2019, HC/S 1023/2019, HC/S 1026/2019, HC/S 1027/2019 and HC/S 1028/2019 all dated 28 April 2021 (the High Court of Singapore final judgments) on the first defendant on 2 July 2021, and demanded for the judgment sum awarded.
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[11] In response to the plaintiffs' demand based on the High Court of Singapore final judgments, the defendants filed OS 1306 on 14 July 2021 coupled with a certificate of urgency dated on the same day. On urgency basis, OS 1306 was heard and defendants obtained the *ex parte* order on 16 July 2021. Then, SVC served the *ex parte* order on CLL via a letter dated 27 July 2021.

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[12] Affected and aggrieved by the defendants' action, the plaintiffs filed OS 1594 to set aside the *ex parte* order.

The LHCJ's Decision

[13] The LHCJ is of the view that the defendants are and were fully aware of the suits filed by the plaintiffs at the High Court of Singapore and had been apprised of the development of the proceedings at all material times. The non-reaction and inactivity on the part of the defendants had implicitly allowed the hearing of the assessment of damages for the plaintiffs to proceed. Furthermore, the defendants have not taken any steps to set aside the final judgments issued by the High Court of Singapore. The defendants had all the time and opportunity to challenge the jurisdiction of the High Court of Singapore but deliberately chose not to do so. The first defendant had even requested that it be informed should enforcement be sought by invoking the Reciprocal Enforcement of Judgment Act 1958 (REJA).

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[14] The LHCJ is of the opinion that the defendants must have known the consequences of the proceedings at the High Court of Singapore, and this was most probably their dominant motivation for seeking the *ex parte* order to declare that the defendants were not liable for the accident. This is almost akin to the act of 'unilaterally contracting out' of the REJA. If the *ex parte* order is allowed to stand, it would have the invidious effect of being incongruent with the very *raison d'être* of REJA.

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[15] The LHCJ is inclined to agree with the plaintiffs' learned counsel that the issue of forum of convenience raised by the defendants is of no relevance at this stage given that the plaintiffs had obtained judgments from the High Court of Singapore, and the same are eligible to be registered and enforced in accordance with the relevant provisions under the REJA.

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[16] As such, the LHCJ found that the *ex parte* order ought to be set aside as it would not only prejudice the plaintiffs who were not heard in OS 1306 but also deprive them of the opportunity to exercise their statutory right to invoke the provisions of REJA in enforcing the High Court of Singapore final judgments against the defendants. Aggrieved by the said decision, the defendants have appealed.

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The Appeal

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[17] The defendants had listed 12 grounds of appeal in its memorandum of appeal. However, learned counsel for the defendants' argument before us focuses only on one main issue, that is, the High Court of Singapore had no

- A jurisdiction to hear the plaintiffs' claims since the cause of action or the said accident happened in Muar, Johor. It was argued that the circumstances and facts of the said accident justifies that Malaysian Courts is the more appropriate forum to hear the plaintiffs' claim since Malaysian laws are applicable as the *lex loci delicti*. The defendants cannot be compelled to enter
- B a conditional appearance in the High Court of Singapore when the cause of action is in Malaysia. The plaintiffs have the burden to satisfy as to why they refused to file their claims in the Malaysian Courts knowing well that the said accident occurred in Malaysia. On the ground of want of jurisdiction alone, the plaintiffs have no meritable claims in the High Court of Singapore, and
- C therefore cannot enforce the High Court of Singapore final judgments on the defendants. The LHCJ was wrong in law and facts in setting aside the *ex parte* order since it was validly obtained and the plaintiffs have no valid reason to do so.

Our Decision

- D [18] First and foremost, we have to stress that the so-called final judgment obtained by the defendants, that is, the *ex parte* order was given on *ex parte* basis. The OS 1306 is titled "Saman Pemula *Ex parte*" and only the defendants were named as the applicants. In their *ex parte* application, the defendants were seeking the following orders:
- E 1. Satu deklarasi bahawa kausa tindakan ini timbul dari satu kemalangan jalan raya pada 24.12.2016 melibatkan motorbas no. AJC 6633 di Lebuhraya Arah Utara KM 137.2 Pagoh Muar dan dengan demikian hanya Mahkamah Rendah di Malaysia mempunyai bidang kuasa sepenuhnya untuk mendengar tuntutan Pihak Plaintiff.
- F 2. Satu deklarasi bahawa Mahkamah Majistret/Sesyen Muar adalah Mahkamah Rendah di Malaysia yang mempunyai bidang kuasa sepenuhnya untuk mendengar tindakan ini memandangkan kausa tindakan ini timbul dari satu kemalangan jalan raya di Lebuhraya Arah Utara KM 137.2 Pagoh Muar iaitu di bawah siasatan bidang kuasa Ibu Pejabat Polis Trafik Muar, Johor dan Mahkamah Majistret/Sesyen Muar mempunyai bidang kuasa sepenuhnya untuk mendengar tuntutan Penuntut.
- G 3. Satu deklarasi bahawa Pemohon-pemohon tidak bertanggungjawab untuk membayar apa-apa jumlah penghakiman yang diperolehi/diberikan oleh Mahkamah Tinggi/Rendah Singapura terhadap pemandu dan/atau pemilik berdaftar motorbas no. AJC 6633.
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- I [19] Prior to the defendants' *ex parte* application via OS 1306, it is an undisputed fact that the defendants knew about the writ of summonses filed by the plaintiffs in the High Court of Singapore. Affidavit evidence shows that from the beginning, the defendants were well-informed of the plaintiffs' action and the defendants had at all material times been given the opportunity to challenge the jurisdictional issue of the High Court of Singapore but

deliberately chosen not to do so. As a consequence, the plaintiffs were able to enter interlocutory judgments against the second defendant in the High Court of Singapore and finally were given the High Court of Singapore final judgments. The defendants again took no steps to set aside those final judgments.

[20] Based on those undisputed facts, the defendants knew that the plaintiffs have the right or interest in enforcing the High Court of Singapore final judgments. Be that as it may, the defendants did not serve any notices or cause papers on the plaintiffs or their solicitor, for whatever reasons, before the hearing of the OS 1306 on 16 July 2021. The plaintiffs only knew about the *ex parte* order later, when they were served of the same. In other words, the plaintiffs were not given any opportunity to oppose the OS 1306 whilst evidence shows that the first defendant had even asked that the plaintiffs to inform them if the plaintiffs were pursuing the registration of the High Court of Singapore final judgments under the Reciprocal Enforcement of Judgment Act 1958 (REJA).

[21] According to the defendant, there is no requirement in law for them to notify the plaintiffs of the intended filing of the OS 1306 by the reason that the plaintiffs do not come within the definition of “plaintiff” under sub-s. 96(3) of the Road Transport Act 1987 (RTA), that is, they are not party in the “proceedings” in Malaysia. It was also argued that the *ex parte* order was premised under sub-s. 96(3) of the RTA and therefore, it suffices that the defendants obtain the declaration before liability is incurred by the plaintiffs in Singapore. More so, the High Court’s jurisdiction to make an *ex parte* order is unlimited, subject only to its own discretion. It is further argued that one High Court Judge cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction.

[22] To begin with, we will look at the relevant law on setting aside an order made *ex parte*. It is clear that O. 32 r. 6 of the Rules of Court 2012 (ROC 2012) provides as follows:

The Court may set aside an order made *ex parte*.

Thus, in terms of jurisdiction, there can be no doubt that the court, and in this appeal the High Court has inherent discretionary power to review and to discharge or vary any order which has been made *ex parte*. In a short decision in the case of *Becker v. Noel & Anor* [1971] 2 All ER 1248, Lord Denning MR had this to say when dealing with the application to set aside an order made *ex parte*:

I am quite clear that not only may the court set aside an order made *ex parte*, but where leave is given *ex parte* it is always within the inherent jurisdiction of the court to revoke that leave if it feels that it gave its original leave under a misapprehension on new matters being drawn to its attention.

- A [23] The rationale behind the discretionary power given to the court in discharging or varying such an order is easy to understand. Eventually, an *ex parte* order given by the court to the applicant is of course always one sided. Therefore, any person aggrieved by the said *ex parte* order should have all the right to come to court to make an application to vary or to have it set aside since that the said aggrieved person was not given a fair opportunity to be heard. In other words, an order made *ex parte* is essentially provisional in nature. On this particular point, we would like to refer to the decision of Sir John Donaldson MR in the case of *WEA Records Ltd v. Visions Channel 4 Ltd & Ors* [1983] 2 All ER 589 (*WEA Records Ltd's* case). His Lordship had this to say:
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As I have said, *ex parte* orders are essentially provisional in nature. They are made by the judge on the basis of evidence and submissions emanating from one side only. Despite the fact that the applicant is under a duty to make full disclosure of all relevant information in his possession, whether or not it assists his application, this is no basis for making a definitive order and every judge knows this. He expects at a later stage to be given an opportunity to review his provisional order in the light of evidence and argument adduced by the other side, and, in so doing, he is not hearing an appeal from himself and in no way feels inhibited from discharging or varying his original order.

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- E This being the case it is difficult, if not impossible, to think of circumstances in which it would be proper to appeal to this court against an *ex parte* order without first giving the judge who made it or, if he was not available, another High Court judge an opportunity of reviewing it in the light of argument from the defendant and reaching a decision. This is the appropriate procedure even when an order is not provisional, but
- F is made at the trial in the absence of one party: see RSC Ord 35, r. 2 and *Vint v. Hudspeth* (1885) 29 Ch D 322, ...

- [24] Taking into consideration that an *ex parte* order is provisional in nature and is not a definitive order, the High Court judge who made such an order should have an unlimited power to review his own order upon hearing the arguments put forward by any aggrieved party. Pursuant to that, the High Court judge should have the inherent power to vary the order or set it aside.
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- [25] Back to the appeal before us, it is clear that the declaration sought by the defendants under OS 1306 related directly to the said accident in which the plaintiffs were involved. Learned counsel for the defendants argued that there is no requirement for them to notify the plaintiffs of the intended filing of the OS 1306 by the reason that the plaintiffs do not come within the definition of "plaintiff" under sub-s. 96(3) of the RTA, that is, they are not party in the "proceedings" in Malaysia. It was further argued that the LHCJ was wrong in law and facts in setting aside the *ex parte* order since it was validly obtained and the plaintiffs have no valid reason to do so. With due respect, we cannot agree with the said argument based on the following reasons.
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[26] On the issue of whether the plaintiffs were the interested party in OS 1306, the fact that the defendants were well-informed and had prior knowledge of the actions taken by the plaintiffs in the High Court of Singapore and also the High Court of Singapore final judgments against them were not disputed. It is clear that the defendants had ample time and opportunity to challenge the jurisdiction of the High Court of Singapore but had deliberately chosen not to do so. In fact, the first defendant itself through its solicitors wanted to be notified by the plaintiffs in the event that enforcement is sought after *via* reciprocal enforcement. Despite those facts, the plaintiffs were not named as a party in OS 1306 by the defendants or at least the defendants had informed the plaintiffs of the defendants' intended *ex parte* application as the plaintiffs are directly affected by the defendants' application. In short, the plaintiffs as interested parties in OS 1306 were not given fair chance to be heard before the *ex parte* order was granted. On this ground alone, the plaintiffs have the right to apply to set aside the *ex parte* order.

[27] Next, learned counsel for the defendants took the stand that the *ex parte* order was premised under sub-s. 96(3) of the RTA and therefore it suffices that the defendants obtain the declaration before liability is incurred by the plaintiffs in Singapore. Unfortunately, we find that OS 1306 did not support learned counsel for the defendants' stand. If we were to look at the intitulement in OS 1306, it clearly shows that the defendants rely on the provision of sub-s. 96(1) and not sub-s. 96(3) of the RTA in their application. For ease of reference, we reproduce the whole provision of s. 96 of the RTA as follows:

Duty of insurers to satisfy judgments against persons insured in respect of third-party risks

96(1) If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

(2) No sum shall be payable by an insurer under subsection (1):

- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the proceedings;
- (b) in respect of any judgment, so long as execution is stayed pending an appeal; or

- A (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained therein and either:
- B (i) before the happening of the said event the certificate was surrendered to the insurer or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed;
- C (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the person to whom the certificate was delivered made such a statutory declaration as aforesaid; or
- D (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part in respect of the failure to surrender the certificate.
- (3) No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable:
- E Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice to the person who is the plaintiff in the said proceedings specifying the grounds on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto.
- F (4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.
- G (5) In this section, the expression “material” means of such a nature as to influence the judgement of a prudent insurer in determining whether he will take the risks, and if so at what premium and on what conditions, and the expression “liability covered by the terms of the policy” means a liability but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.
- H (6) In this Part, reference to a certificate of insurance in any provision relating to the surrender or the loss or destruction of a certificate of insurance shall, in relation to policies under which more than one certificate is issued, be construed as references to all the certificates and shall, where any copy has been issued of any certificate, be construed as including a reference to that copy.
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[28] On the issue of the intitulement, it is trite that every originating summons shall state in its intitulement any provision of the rules and any provision of any written law under which the court is being moved as stated under O. 7 r. 2(1 A) of the Rules of Court 2012 (ROC). It is mandatory in nature by the use of the word 'shall' in the said provision. In *Cheow Chew Khoon v. Abdul Johari Abdul Rahman* [1995] 4 CLJ 127; [1995] 1 MLJ 457, this court through the decision of Gopal Sri Ram JCA (as he then was) had this to say at p. 142 (CLJ); p. 477 (MLJ):

The plaintiff, as noted earlier, says that if one were to undertake a careful scrutiny of the originating summons and the affidavit in support, one would come to the conclusion that it is not an application made under O. 89. The summons does not, as I observed very early in this judgment, state any particular rule of court in its intitulement. Now, I think that is not only wrong but plainly embarrassing. How, might one ask, is a defendant or the court to determine which rule of court the plaintiff is invoking unless he explicitly specifies it? If a defendant and the court should have to conduct a close examination of the supporting affidavit in each case in order to determine the particular jurisdiction or power that is being invoked by an originating summons or other originating process that requires an intitulement, then a plaintiff will be at liberty to shift from one rule to another or indeed from one statute to another as it pleases him without any warning whatsoever to his opponent or the court. It would make a mockery of the principle that there must be no surprise in civil litigation. If the submission of counsel be the law, then it is wrong. But I am firmly of the view that it is not.

In my judgment, this matter, which is a point of practice and procedure, is to be resolved by reference to the fundamental principle that a party must not take his opponent or the court by surprise. It is my opinion that an originating process requiring an intitulement must state, with sufficient particularity, either in its heading or in its body, the statute or rule of court under which the court is being moved: otherwise, it would be an embarrassing pleading and he may be liable to be struck out, unless sooner amended. (emphasis added)

See also our decisions in *Uthayakumar Ponnusamy v. YAB Dato' Sri Najib Tun Razak Perdana Menteri Malaysia & Ors* [2017] 6 CLJ 297; [2017] 1 MLJ 235 and *Ketua Pengarah Imigresen Malaysia lwn. Heng Peo* [2007] 2 CLJ 111, [2007] 3 MLJ 97.

[29] In OS 1306, the defendants moved the court on *ex parte* basis to obtain three declarations order specifically under sub-s. 96(1) of the RTA, sub-s. 59(2) and para. 65(1)(a) of the Subordinate Courts Act 1948, and O. 7 r. 3 of the ROC. No amendment has been made to the intitulement so far. Therefore, the defendants cannot come before us and argue that their OS 1306 was based on a provision of the law which is not mentioned in the intitulement, that is sub-s. 96(3) of the RTA.

- A [30] Thus, the question is, can the defendants come to court to seek declaration orders under sub-s. 96(1) of the RTA in OS 1306? We have to answer the question in the negative. It is clear that the provision to make a declaration can only be found generally under s. 41 of the Specific Relief Act 1950 or specifically under sub-s. 96(3) of the RTA in the case of repudiating liability under an insurance claim. We find that the courts are not equipped with the necessary power or jurisdiction to hear and make a declaration under sub-s. 96(1) of the RTA. Based on that proposition, we are of the view that the *ex parte* order is irregularly obtained.
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- C [31] Furthermore, the provisions of the law as enunciated under sub-s. 96(3) of the RTA is clear. To repudiate liability to pay in any insurance claim, the insurer had to obtain a declaration from a court that the insurance was void or unenforceable. Ironically, none of the declarations sought in OS 1306 can be considered to give effect to the defendants' intention to repudiate liability to pay the plaintiffs' demand under the High Court of Singapore final judgments. What was asked under prayer 3 of OS 1306 is merely to declare that defendants were not liable to pay the plaintiffs. In the two other prayers, the defendants seek to declare that the cause of action arose in Muar, Johor and the subordinate courts in Muar had the jurisdiction to hear all matters related to the said accident, respectively. That was all that were sought.
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- E [32] Notwithstanding the declarations obtained by the defendants *via* OS 1306, the fact is that the impugned insurance is still valid and intact in favour of the plaintiffs since no steps have been taken by the defendants to declare that the said insurance is void or unenforceable. Thus, even if OS 1306 was properly instituted under sub-s. 96(3) of the RTA, which was not in this case, we are of the view that declarations obtained by the defendants could not stop the plaintiffs' demand under the High Court of Singapore final judgments and enforce the said judgments under REJA.
- F
- G [33] Therefore, on these two points alone, namely on the plaintiffs' right to be heard and on the clear provision of law, that is under s. 96 of the RTA and coupled with the trite principle of the procedure on intitlement, we are of the considered view that the *ex parte* order can no longer be defended by the defendants. The LHCJ can validly review the *ex parte* order given to the defendants and is further justified to make an order to set it aside.
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- I [34] Besides that, we also consider another point of law that had been raised by learned counsel for the plaintiffs who had focused his submission on the leading authority in the case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393 (*Badiaddin's* case) decided by the Federal Court's to justify the setting aside of the *ex parte* order. It was argued that, the *ex parte* order obtained by the defendants, amongst others, are in breach of the rules of natural justice, tainted with bad faith and/or in contravention of written law. Thus, it can be set aside *ex debito justitiae*.

[35] We had discussed on the issue of whether the plaintiffs were the interested party in OS 1306 at para. [26] above. That issue is interrelated to the issue of breach of natural justice argued by learned counsel for the plaintiffs. As mentioned earlier, it is obvious that the plaintiffs were not named as parties in OS 1306 or at least being notified prior to the plaintiffs' application. The defendants even knew in advance that the plaintiffs will be directly affected by the declarations sought. The plaintiffs have to be given a right to be heard to present their case before being affected by the declarations sought by the defendants. The defendant's deliberate action or omission certainly amounts to neglecting the basic principle of natural justice.

[36] On the issue of bad faith, we are inclined to agree with the learned counsel for the plaintiffs' submission that the defendants alleged 'urgency' as ground to obtain the *ex parte* order *via* OS 1306 was entirely self-inflicted and was a direct result of their own action. The undisputed facts show that the defendants themselves had taken no steps in the proceedings initiated by the plaintiffs in the High Court of Singapore, even though they were well-informed of every step taken in the plaintiffs' actions. We also agree that it would be defying logic if the defendants were allowed to rely on their own non-action in justifying the alleged 'urgency' in their application to obtain the declarations that clearly defy the plaintiffs' right to enforce the High Court of Singapore final judgments. More so, the defendants' paramount intention in obtaining the *ex parte* order is to prevent the plaintiffs from enforcing the High Court of Singapore final judgments as averred at para. 27 of the affidavit in support dated 14 July 2021 (plaintiff's AIS) affirmed by T Rajasingam a/l LC Thalisingam on behalf of the defendants as can be seen in encl. 5 at p. 44. From those facts and circumstances, we are of the considered view that the element of bad faith in the defendants' action *via* OS 1306 can be inferred. Therefore, the act of the defendants obtaining the *ex parte* order is akin to the act of escaping liability through the back door which cannot be condoned or allowed.

[37] Another issue that had been raised by learned counsel for plaintiffs based on the principle of *Badiaddin's* case was that, the *ex parte* order obtained by the defendants contravened the statute, that is of the REJA. It was argued that the High Court of Singapore final judgments are eligible to be registered as judgments in Malaysia as they satisfied all three requirements stipulated in sub-s. 3(3) of REJA. It was further argued that the defendants in filing and obtaining the *ex parte* order had sought to defeat and undermine the purpose and intention of parliamentary enactment of REJA and therefore is in direct contravention of the said law, and accordingly ought to be set aside.

[38] On this issue, we refer to the case cited by learned counsel for the plaintiffs in *Mann Holdings Pte Ltd & Anor v. Ung Yoke Hong* [2019] 6 CLJ 475 where this court had succinctly explained the purpose and intention of REJA as follows:

- A [59] Coming then to the Act itself and its operation. The Reciprocal Enforcement of Judgments Act 1958 is specific legislation enacted by Parliament to confer specific jurisdiction on the courts to register judgments given by superior courts of those reciprocating countries listed in the First Schedule to the Act. The whole basis of the Act starts with the concept or principle of comity and substantial reciprocity between
- B nations. This is evident from the terms of s. 3(2) which reads:
- C (2) The Yang di-Pertuan Agong may, if he is satisfied that in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country or territory outside Malaysia, substantial reciprocity of treatment will be assured as respects the enforcement in that country or territory of judgments given in the High Court, by order extend this Part to that country or territory and may, by the same or a different order, amend the First Schedule to add that country or territory thereto and specify what courts of that country or territory shall be deemed to be superior courts for the purposes of this Part.
- D [39] From the evidence, the defendants acknowledge that they were informed of the High Court of Singapore final judgments by the plaintiffs' solicitors *via* a letter dated 2 July 2021 and the plaintiffs had affirmed the same fact. See para. 16 of the plaintiffs' AIS in OS 1306 in encl. 5 at p. 42 and para. 19 of the defendants' affidavit in support dated 23 August 2021 in OS 1594 in encl. 5 at p. 58, respectively.
- E [40] Thus, it is not disputed that the High Court of Singapore final judgments obtained by the plaintiffs have met all the three requirements stated in sub-s. 3(3) of the REJA, namely that the judgments are those of a superior court which are firstly final and conclusive as between the parties thereto; secondly, there is payable thereunder a sum of money, and thirdly the judgments are from a country specified in the First Schedule of the REJA. The said judgments shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court under
- F sub-s. 3(4) of the REJA.
- G [41] Clearly, the plaintiffs are entitled to register and execute the High Court of Singapore final judgments in Malaysia in accordance with the provisions of the REJA. Therefore, we are in agreement with the counsel for the plaintiffs' contention that the defendants in filing and obtaining the *ex parte* order had sought to defeat and undermine the purpose and intention of the REJA and therefore is in direct contravention of the said law. Further, we are of the opinion that in the circumstances of the case, OS 1306 filed by the defendants was not a *bona fide* attempt to seek a legal remedy from the court but solely for the purpose of circumventing the law.
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- I

[42] Therefore, the defendants' action in filing and obtaining the *ex parte* order is in direct contravention of the REJA and in consonant with the principle laid down in *Badiaddin's* case. In adding salt to the wound, the matter becomes worse when we take into consideration that the defendants' purpose is to circumvent the law. We agree with the LHCJ finding on this issue when his Lordship said this at para. 46 of his grounds of judgment:

[46] If allowed to stand, this *ex-parte* Order – declaring that the defendants are not liable for the accident and in the circumstances where the defendants intentionally refusing to defend the claims against them in Singapore, would have invidious effect of being incongruent with the very *raison d'être* of REJA – which is a legislation providing for the reciprocal enforcement of judgments of superior courts between participating countries. This is my view would be within the category of “contravention of statute” as stated by leading authorities, warranting the setting aside of the *ex-parte* Order.

[43] As we mentioned earlier, the focal point of the defendants' argument before us is on the issue of jurisdiction. It was argued that the High Court of Singapore have no jurisdiction to hear the plaintiffs' claim and therefore, the plaintiff must be prevented from enforcing the High Court of Singapore final judgments in Malaysia. With due respect, it seems that the defendants had taken a wrong step in obtaining the *ex parte* order, an act that we find that had contravene the law and with the purpose of circumventing the law. However, the defendants are not shut out from raising their grievances on the issue of jurisdiction. The defendants are at liberty to apply to set aside the registration of the said judgments under REJA on the reason of want of jurisdiction as provided under sub-para. 5(1)(a)(ii) of the REJA. For ease of reference, we produced the said provision of sub-s. 5(1) as follows:

5(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:

(a) shall be set aside if the registering court is satisfied:

- (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;
- (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- (iv) that the judgment was obtained by fraud;

- A (v) that the enforcement of the judgment would be contrary to public policy in Malaysia; or
- (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; and

- B (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

- [44] What the defendants should do is to wait until the plaintiffs apply to register the High Court of Singapore final judgments under REJA, and then apply to set it aside on want of jurisdiction. See the case of *United Malayan Banking Corp v. Khoo Boo Hor* [1996] 1 SLR 359. For all intents and purposes, the defendants will still have their day in court to raise the issue of the jurisdiction of the High Court of Singapore in hearing matters related to the accident that happened in Muar, Johor. For the same reason, we agree with counsel for the plaintiffs' submission that the issue of the forum of convenience is no longer relevant to be considered in this appeal. The issue of forum can to be argued together with the issue of the jurisdiction of the court in setting aside the registered judgments.

E **Conclusion**

- [45] For all the reasons adumbrated above, we find no merit in the defendants' appeal to warrant our appellate intervention. Accordingly, we are unanimous in dismissing this appeal with cost. The defendants are hereby ordered to pay costs of RM10,000 to the plaintiffs subject to allocatur.

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